

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF VERMONT**

UNITED STATES OF AMERICA)	
)	
VS.)	CRIMINAL 5:01-cr-00012
)	
DONALD FELL)	
_____)	

**DEFENDANT DONALD FELL’S MOTION TO DISMISS THE SUPERSEDING
INDICTMENT AND/OR TO STRIKE THE AMENDED NOTICE OF INTENT TO SEEK
PENALTY OF DEATH AS VIOLATIVE OF PRINCIPLES OF LIMITED NATIONAL
POWERS AND STATE SOVEREIGNTY**

Now Comes Donald Fell, through his undersigned counsel and moves this Honorable Court for an order dismissing the Superseding Indictment (Doc. 57) and/or striking the Amended Notice Of Intent To Seek Penalty Of Death. (Doc. 609).

For the reasons set forth more fully in the accompanying memorandum in support, principles of federalism preclude the government’s attempt to require the citizens of a state to participate in a system of capital punishment, in a case involving crimes of a kind traditionally prosecuted in state court, when those citizens and the state officials that represent them have rejected that penalty.

WHEREFORE, for the reasons described in greater detail in the accompanying Memorandum, Mr. Fell respectfully requests this Court to dismiss the Superseding Indictment and/or to strike the Amended Notice Of Intent To Seek Penalty Of Death.

Dated at San Francisco, California, this 16th day of November, 2015.

Respectfully Submitted,

MICHAEL N. BURT
KERRY B. DeWOLFE
JOHN T. PHILIPSBORN

By: /s/ Michael N. Burt

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CERTIFICATE OF SERVICE

I hereby certify that on November 16, 2015, I electronically filed with the Clerk of

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using the CM/ECF system. The CM/ECF system will provide service of such filing(s)

via Notice of Electronic Filing (NEF) to the following NEF parties:

Michael N. Burt, Esq.
Kerry B. DeWolfe, Esq.
John Phillipsborn
William B. Darrow, Esq., Assistant United States Attorney
Bruce R. Hegyi, U.S. Dept. Of Justice

I also caused to be served, by U.S. Postal Service, the following non-NEF party:

Donald Fell
Register Number 05306-010
The Metropolitan Detention Center
P.O. Box 329002
Brooklyn, NY 11232

Dated at San Francisco, California, this 16th day of November, 2015.

By: /s/ Michael N. Burt

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